SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. —

THE UNITED STATES OF AMERICA, CLAIMANT, PETITIONER,

vs.

N. WALSER EDENS AND W. H. CORRY, AS TRUSTEES OF CAROLINA MILLS, INC., A CORPORATION OF SOUTH CAROLINA, DEBTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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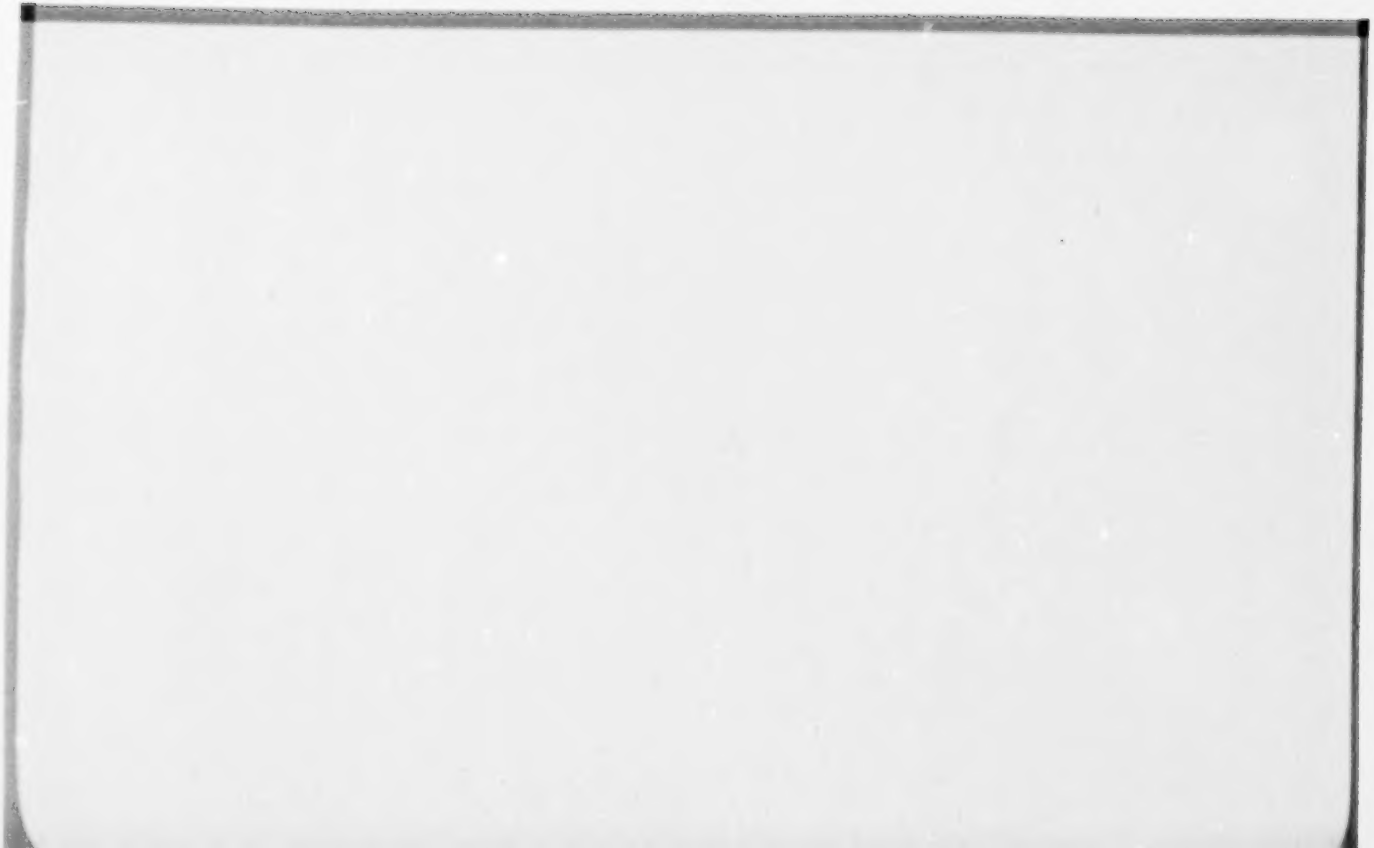

1 In United States Court of Appeals for the Fourth Circuit

Appendix B to Brief of Appellant

2 In the District Court of the United States for the Eastern District of South Carolina

In Bankruptcy No. 4412

REPORT OF REFEREE UPON CLAIM OF THE UNITED STATES OF AMERICA

In Re:
Carolina Mills, Inc.

This claim has, along with a number of other disputed claims been referred to the undersigned by Order of Honorable J. Waties Waring, United States District Judge, dated January 12, 1950, to take testimony herein and report findings of fact and conclusions of law, together with special matters, in accordance with the above Order.

This claim relates to amount of United States withholding taxes, social security taxes and unemployment taxes.

A hearing was held on May 24, 1950, in which it was stipulated that the Government is entitled to the principal amount as set forth in its proof of claim: The only question involved being the right of the Government to charge interest on the principal amount of the claim subsequent to November 11, 1948.

From a letter dated February 27, 1950, addressed to Hon. H. P. Bowers, Collector of Internal Revenue, Columbia, S. C., and signed by Charles Oliphant, Chief Counsel of the Bureau of Internal Revenue, Washington, D. C., read into the record it appears that the Government's claim for penalties incurred before the institution of the instant reorganization proceeding is conceded in view of the applicability of Section 57 of the bankruptcy act as amended.

Both the claimant and the Trustees have submitted written arguments and the disputed portion of the claim has resolved itself into an interpretation of the law relating to interest on Government tax claims in Reorganization proceedings under Chapter X of the Bankruptcy Statutes, subsequent to the filing of Petition.

3 In reaching a conclusion upon this matter, I shall first refer to the general bankruptcy statutes and then consider their relation to the Corporate Reorganization Statutes in Chapter X of the Bankruptcy Act.

The bankruptcy statute relating to the payment of debts which have priority appears in Section 62 a, as amended. Under this in one class are listed "taxes, legally due and owing by the bankrupt to the United States, or any State or subdivision thereof." In the case of *State of Missouri* v. *Ross et al.*, 299 U. S. 72, 57 S. Ct. page 60, the court in interpreting this provision of the bankrupt act says: "The intention clearly was to put these various governmental units in respect of their taxes in a single class upon terms of equality with one another. Since Congress was at pains to set forth the order of priority in distinct paragraphs under separate numerals, we are unable to reach any other conclusion. If it had been intended to establish priorities as among the governmental units named in the order in which they appear in the sixth paragraph, the very structure of section 64 b plainly suggests that each would have appeared under a separate numeral instead of all being grouped under a single numeral."

From the foregoing, therefore, it will be seen that interest on the claim of the United States could only be allowed further bankruptcy if interest on the State and Municipal claims were also allowed after bankruptcy. Otherwise, the equality would be upset. Also, as pointed out in the case of *City of New York v. Saper*, 336 U. S. 328; in referring to the Chandler Act "The former expressly provided that taxes yield priority to administration expenses and certain wages neither of which bear interest. The latter amendments finalized the subordination of taxes to other priority items. They also wrote in Sec. 57, sub n, the requirement of proof formerly dispensed with under Section 64, subsection a."

But, says the Government, in this matter those rules relate to straight Bankruptcy proceedings, and do not apply to a proceeding based upon a petition for reorganization under Chapter X of the Bankruptcy Act.

4 In order to determine the force of this position, I shall now endeavor to determine the relationship of this proceeding to a straight bankruptcy proceeding, so far as it relates to interest subsequent to the filing of the Petition on November 11, 1948.

In Chapter X,—Corporate Reorganization, in Section designated Section 102, we find the following:

"The provisions of Chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, that section 23, subdivision b and n of section 57, Section 64, and subdivision f of section 70 shall not apply

in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of Chapters I to VII inclusive. For the purpose of such application, provisions relating to 'bankrupts' shall be deemed to include proceedings under this chapter. For the purpose of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act, except where an adjudication has previously been entered."

Of the sections referred to above as being excepted from the provisions of this Act, only two have any possible bearing upon the questions under consideration. These are subdivision n of Section 57 and Section 64.

Subsection n of Section 57 provides "Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section". Section 64 relates to debts which have priority which has been heretofore referred to in this Report with regard to classification of tax claims.

The statutory regulations and provisions with respect to claims of the United States under Chapter X of the bankruptcy act appear to be set forth in sections 199 and 200 in that Chapter, and the provisions of these sections and their relation to the decision of the United States Supreme Court in the case of *City of New York v. Saper*, 336 U. S. 328, 69 S. Ct. Rep. Page 554 appear to be basis upon which this matter should be decided.

Section 199 provides that if it is a creditor the claim shall be deemed affected by a plan under Chapter X and the Secretary of the Treasurer is authorized to accept or reject a plan in respect to a claim of the United States. It also provides that no plan which does not provide for payment of the tax claim shall be confirmed by the judge except upon acceptance of a lesser amount by the Secretary of the Treasury and provides that should the Secretary of the Treasury fail to accept or reject plan for 90 days after receipt of written notice, his consent will be conclusively presumed.

This act in substance embodies the essential elements of an act passed in 1935 (prior to Chandler Act) known as Public No. 396, 74th Congress, 49 Stat. 965.

Section 200 provides that where not inconsistent with the provisions of this chapter, the right, duties and liabilities of creditors shall be the same before the approval of petition as in a bankruptcy proceeding before adjudication and upon the approval of the Petition, as in a bankruptcy proceeding upon adjudication.

From the foregoing, I cannot find any definite legislative action differentiating the Reorganization Proceedings from the Straight Bankruptcy proceedings in so far as the determination of when interest stops is concerned; and this brings us to the case of *City of New York v. Saper case*, heretofore referred to.

That case holds that the long-standing rule against post-bankruptcy interest on tax claims is implicit in the current Bankruptcy Act.

Conclusion

In conclusion, I find that the claim of the United States of America, which is the subject of this report carries interest only to November 11, 1948.

6 This finding relates to the payment of debts and liabilities by the Trustees under the Reorganization proceeding. I am not passing upon what claim the United States might have against Carolina Mills, Inc., should eventually all debts be liquidated and the assets returned to Carolina Mills, Inc., as a solvent corporation.

Respectfully submitted,

JAMES B. HEYWARD,
Referee in Bankruptcy.

July 1, 1950.

In United States District Court

ORDER—December 22, 1950

The United States has filed claims for various taxes due it consisting of Federal Unemployment taxes (Section 1605 (b), Internal Revenue Code); Federal Insurance Contributions (Section 1420(b), Internal Revenue Code); withholding taxes (Section 1627 Internal Revenue Code, subchapter D and E of Chapter 9). No question is raised as to the principal amount of these taxes.

However, there is a question raised as to what allowance of interest on them should be made. The Referee allowed the full amount of the taxes with interest thereon at the rate of 6% per annum up to November 11, 1948, the time of the bankruptcy pro-

ceedings. The Government has filed exceptions to the report and takes the position that interest is not stopped by the institution of these proceedings, but that the claim of the Government should be allowed to carry interest at the legal rate until the actual date of payment.

These three claims will, of course, be considered as one since they are on a parity with each other and since all tax claims of the United States or any state or subdivision are on the same footing and are entitled to the same parity treatment. There can be no question in regard to this since the decision of the Supreme Court of the United States in the case of *State of Missouri v. Ross*, 299 U. S. 72.

As to the allowance of interest generally on governmental tax claims in bankruptcy, the decision of the same court in *New York* v. *Saper*, 336 U. S. 328, would appear to be equally definite.

7 However, on behalf of the Government, it is earnestly contended that the *Saper* decision applies only to ordinary bankruptcy adjudications and is not applicable to proceedings for re-organization under Chapter X. Let it be first distinctly understood that the *Saper case* was decided as recently as March, 1949, and is under the present bankruptcy Act with its various amendments including the sweeping changes brought about by the Chandler Act of 1938, wherein were embodied the new provisions allowing re-organization proceedings, particularly through Chapter X. A careful reading of the opinion in that case convinces one that the Court was considering the overall matter of tax priority in bankruptcy proceedings and the interesting and conclusive reasoning of the opinion shows that the Court was of the opinion that interest would not be allowed as here claimed by the Government. The Court says (pp. 337-338):

> "The Court of Appeals concluded that by the 1926 amendment and the Chandler Act, Congress assimilated taxes to other debts for all purposes, including denial of post-bankruptcy interest. We think this is a sound and logical interpretation of the Act after those amendments to (paragraphs) 64(a) and 57(n). Considered in conjunction with the general rule against post-bankruptcy interest as well as (paragraph) 63's limitations of interest on other claims to date of bankruptcy, they compel our conclusion, already stated, that the statute as

amended did not contemplate any exception in favor of tax claims."

The Government has filed an interesting and ingenious brief combating the views enunciated by the Referee. The major portion of this brief is given over to the discussion of the proceedings of Congress leading up to the adoption of the amendments to the Bankruptcy Act allowing re-organization. These arguments are skillfully presented and might well have been persuasive before the decision in the *Saper case*. And I am sure the same arguments were presented in that case, but the Court's decision effec-
8 tively and finally concluded these matters; and there can now be no question of the present meaning of the Act.

The Government apparently recognizes the potency of the *Saper* decision and attempts to differentiate it by taking the position that the Court never intended its ruling or reasoning to apply to Chapter X. In Chapter X, Section 102, the following is provided:

> "The provisions of Chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, that section 23, subdivision h and n of section 57, Section 63, and subdivision f of section 70 shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of Chapters I to VII inclusive. For the purposes of such application, provisions relating to "bankrupt's shall be deemed to include proceedings under this chapter. For the purpose of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of filing of an original petition under section 128 of the Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act, except where an adjudication has previously been entered."

The only exception above named that can possibly be held to apply would be Sections 57n and Section 64. The first of these says:

> "Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section."

Section 64 relates to debts which have priority. Neither of these sections appear to, in any way, affect the matter of interest.

9 But the Government calls attention to Section 199 of Chapter X which authorizes the Secretary of the Treasury to accept or reject a plan and gives power to accept less than the full amount of the claim. The rights and powers given by this section do not appear to me to strengthen the claim of the United States. The only influence that the section would have upon the argument here would seem to show that the authors of the Chandler Act intended to make even more liberal the usual provisions of tax claims in bankruptcy by allowing a discretionary reduction.

Section 200 of the same act, which the Government refers to, merely provides that, under the provisions of this Chapter, the rights, duties and liabilities of creditors shall be the same before the approval of the petition as in an ordinary bankruptcy proceeding before adjudication and that the approval of the petition will bring about the same status as an adjudication.

The argument that any of these provisions of the Act set aside the clear meaning of the Act as explained in the *Saper case* has no appeal to my reason. It is quite clear that the intendments of these provisions and many others is that the ordinary rules of bankruptcy procedure shall apply in reorganization proceedings except that, of course, many of them cannot be entirely applicable and only in such cases they do not apply. It would have been so easy, as is well pointed out by Mr. Justice Jackson, for the Congress to have clearly set forth its desire that tax liens should draw interest until payment. Congress has not done so. And, as a matter of fact, Congress, in enacting the Chandler Act and adopting the plan for reorganizations under Chapter X has moved forward to enacting a more progressive and lenient approach to aiding corporations struggling under the burden of debt and economic stress, and the Act is one which holds out a helping hand to business enterprises with a view to attempting to put them back on their feet and set them going again. To adopt the view presented here by the Government would be to say that an ordinary bankrupt should be treated with more consideration than a sick debtor struggling to be brought

10 back to life in a reorganization proceeding. The whole theory and purport of the Act is just the reverse. And while these considerations are not determinative, they should influence the decision of the construction and meaning of the Act. In my opinion, the *Saper case* is entirely determinative of the issue here, and the attempt to circumvent its clear meaning is futile.

For the foregoing reasons I adopt and confirm the decision of the Referee in disallowing the claim for interest subsequent to November 11, 1948, and overrule the exceptions to his report.

And it is so ordered.

J. WATIES WARING,
United States District Judge.

Charleston, South Carolina.
Date: December 22, 1950.

A True Copy, Attest,

[SEAL.]

ERNEST L. ALLEN,
Clerk of U. S. District Court
East. Dist. So. Carolina.

11 PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6241

UNITED STATES OF AMERICA, CLAIMANT, APPELLANT,

versus

N. WALSER EDENS AND W. H. CORRY, AS TRUSTEES OF CAROLINA MILLS, INC., A CORPORATION OF SOUTH CAROLINA, DEBTOR, APPELLEES.

Appeal from the United States District Court for the Eastern District of South Carolina, at Charleston

MINUTE ENTRIES

February 13, 1951, the record on appeal is filed and the cause docketed.

February 16, 1951, the appearance of Henry Hammer is entered for the appellees.

February 17, 1951, the appearance of Ben Scott Whaley, U. S. Attorney, and Louis M. Shimel, Assistant U. S. Attorney, is entered for the appellant.

February 24, 1951, the appearance of Theron Lamar Caudle, Assistant Attorney General, Ellis N. Slack and Homer R. Miller, Special Assistants to the Attorney General, is entered for the appellant.

March 2, 1951, statement under Section 3 of Rule 10 is filed.

March 12, 1951, brief and appendices of appellant are filed.
March 29, 1951, brief of appellees is filed.

In United States Court of Appeals

ARGUMENT OF CAUSE—April 11, 1951

April 11, 1951, (April term, 1951) cause came on to be heard before Parker, Soper and Dobie, Circuit Judges, and was
12 argued by counsel and submitted.

April 17, 1951, appellant's memorandum of additional authorities is filed.

13 United States Court of Appeals for the Fourth Circuit

No. 6241

UNITED STATES OF AMERICA, CLAIMANT, APPELLANT,

versus

N. WALSER EDENS AND W. H. CORRY, AS TRUSTEES OF CAROLINA MILLS, INC., A CORPORATION OF SOUTH CAROLINA, DEBTOR, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON

OPINION—June 6, 1951

Before PARKER, SOPER and DOBIE, Circuit Judges.

Homer R. Miller, Special Assistant to the Attorney General, (Theron Lamar Caudle, Assistant Attorney General; Ellis N. Slack and A. F. Prescott, Special Assistants to the Attorney General; Ben Scott Whaley, United States Attorney, and Louis M. Shimel, Assistant United States Attorney, on brief) for Appellant, and Henry Hammer for Appellee.

14 PARKER, Circuit Judge:

This is an appeal from an order in a Chapter X proceeding in bankruptcy holding that the United States is entitled to interest on tax claims only to date of the filing of the petition in reorganization. The District Judge based his decision on *City of New York* v. *Saper* 336 U.S. 328, which held that interest on tax claims

ceased to run upon the filing of a petition in ordinary bankruptcy. The government attempts to distinguish a Chapter X proceeding from such a case.*

We think that the decision below was correct. The holding in *City of New York* v. *Saper* was that "by the 1926 Amendment and the Chandler Act, Congress assimilated taxes to other debts for all purposes, including denial of post bankruptcy interest"; and there is nothing in Chapter X or in any other provision of the act to indicate any intention by Congress that tax claims should be treated any differently in this respect in Chapter X proceedings from the way they are treated in other bankruptcy proceedings. It could hardly have been contemplated that a tax claim filed in a Chapter X proceeding should be entitled to post bankruptcy interest upon a reorganization of the debtor but not if reorganization should fail and an adjudication of straight bankruptcy should follow. That the rights of creditors are no greater in Chapter X proceedings than in ordinary bankruptcy is expressly provided by 11 USCA 600, which is as follows:

> "Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of the creditors and of all other persons with respect to the property of the debtor shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication."

We do not think it any ground of distinction that the Supreme Court in the *Saper case* referred to certain sections of the Bankruptcy Act which have no relation to Chapter X proceedings. The purpose of this was not to delimit the change made by Congress with respect to post bankruptcy interest on tax claims but merely to point out indicia of the Congressional purpose to adopt the rule of the English bankruptcy act in the elimination of post bankruptcy interest. In *United States* v. *General Enginering & Mfg. Co.* 8 Cir. — F. 2d — post bankruptcy interest was denied on a tax claim in a Chapter XI reorganization; and we see no ground upon which that case can be distinguished from the case at bar. What

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* This distinction finds support in In re Lexington Homes 94 F. Supp. 482 and 6 Collier (14th ed.) pp. 2815-2819.

was said by Judge Sanborn in that case relative to a Chapter XI proceeding, we think to be equally applicable here. Said he:

> "It seems obvious to us that all of the sections of the Bankruptcy Act upon which the Supreme Court relied in the *Saper case* in demonstrating that tax claims in bankruptcy proceedings are debts and that interest upon them is allowable only to the date of bankruptcy are equally applicable to proceedings for an arrangement under Chapter XI. We agree with the Referee in Bankruptcy and the District Court that the Government in the instant proceeding was no more entitled to the allowance of interest on its tax claim after November 17, 1948, than it would have been had the debtor on that day been adjudicated a bankrupt."

The equitable consideration which justify denying post bankruptcy interest on tax claims in the case of reorganization
16 proceedings are quite as strong as for denying it in straight bankruptcy proceedings. The real reason in either case is that the delay resulting from the institution of the proceeding should not be permitted to benefit one class of creditors at the expense of another, but that the rights of all should be determined as of the commencement of the proceeding. It is easy to see that post bankruptcy interest on tax claims in in ordinary bankruptcy comes out of assets to which other creditors would be entitled. While not so simple, the same is true in case of reorganizations under Chapter X; for the amount allotted creditors under any plan of reorganization must necessarily take account of claims which have been given absolute priority. Here as in the case of simple bankruptcy, no class of creditors should be allowed to profit at the expense of another because of a delay for which the law is responsible.

We find nothing in the debates of Congress which conflicts with the conclusion here reached. We are referred to 79 Congressional Record Part 13 p. 14,101, wherein reference is made to the provision of Section 77-B of the Bankruptcy Act which requires that notice of a plan of reorganization affecting tax claims be given to the Secretary of the Treasury and that his consent be obtained before the government can be required to accept less than its claim. There is nothing in this to indicate that claims for taxes are to bear interest after the filing of the petition. It indicates merely that, in a plan of reorganization tax claims may be scaled with the approval of the Secretary of the Treasury.

For the reasons stated, the order of the court below will be affirmed.

Affirmed.

17 United States Court of Appeals for the Fourth Circuit

No. 6241

UNITED STATES OF AMERICA, CLAIMANT, APPELLANT,

vs.

N. WALSER EDENS AND W. H. CORRY, AS TRUSTEES OF CAROLINA MILLS, INC., A CORPORATION OF SOUTH CAROLINA, DEBTOR, APPELLEES.

JUDGMENT—June 6, 1951

APPEAL FROM the United States District Court for the Eastern District of South Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of South Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

MORRIS A. SOPER,
U. S. Circuit Judge.

ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to-wit, July 7, 1951, the mandate of this Court, in this cause, is issued and transmitted to the United States District Court at Charleston, S. C.

Same day, the record on appeal is returned to the Clerk of the District Court at Charleston, S. C.

August 15, 1951, the record on appeal is received from the Clerk of the District Court.

18 In the Supreme Court of the United States, October Term, *1951*

[Title omitted]

STIPULATION AS TO RECORD

SUBJECT TO THIS COURT'S APPROVAL, IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties to the above-entitled cause, that, for the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record may consist of the following:

1. Appendix B to brief of Appellant in the United States Court of Appeals for the Fourth Circuit.

2. The proceedings had before the United States Court of Appeals for the Fourth Circuit.

IT IS FURTHER STIPULATED AND AGREED that Petitioner will cause the Clerk of the United States Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court of the United States the complete certified record on appeal.

IT IS FURTHER STIPULATED AND AGREED that the parties hereto may refer in their briefs and argument to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.

19

HENRY HAMMER,
Counsel for Respondents.

AUGUST 9, 1951.

20 Clerk's Certificate to foregoing transcript omitted in printing.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 943953 181

Supreme Court of the United States

No. 299, October Term, 1951

[Title omitted.]

Order allowing certiorari

Filed November 5, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 100, United States vs. Bloom.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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